

**ZONING HEARING BOARD OF DOYLESTOWN TOWNSHIP
BUCKS COUNTY, PENNSYLVANIA**

Application No. Z-10-2018

Applicant: Vertical Bridge Development LLC
1012 North Bethlehem Pike, Suite 200-B3
Lower Gwynedd, PA 19002

Owner: Stan Zawadski
408 Creek Road
Pipersville, PA 18947

Subject Property: Tax Parcel No. 09-029-002 which is located at 754 Edison Furlong Road, Furlong, PA 18925.

Requested Relief: The Applicant seeks to use the property for a wireless commercial communications tower, wireless commercial communications antennas, and supporting structures. Applicant asserts that the use is permitted by special exception. Tower based wireless communications facilities which are located outside the rights-of-way, are permitted by special exception when the facility is a sole use on a lot located within the C-1 Commercial Zoning District, and all specific requirements of the use are met. Applicant requests a Special Exception under §175-137, §175-138, §175-67B, §175-16F, and §175-16F(4)(c)[1][a] & [d] of the Doylestown Township Zoning Ordinance (“Ordinance”), accordingly.¹

Hearing History: The application was filed in Doylestown Township on July 26, 2018. Hearings were held on September 17, 2018, October 25, 2018, November 19, 2018, and December 17, 2018, at the Doylestown Township Building, 425 Wells Road, Doylestown, PA 18901.

Appearances: Applicant by: Richard J. Lemanowicz, Esq.
1012 North Bethlehem Pike
Suite 200-B3
Lower Gwynedd, PA 19002

¹ Although not strictly part of the physical application, Applicant also requested of Doylestown Township a determination that certain dimensional issues represented lawful preexisting nonconformities. See Exhibit A-13, Request for Lawful Preexisting Nonconformity Status and A-14, October 27, 2017 Response by Doylestown Township. The request will be addressed, in part.

Artifact Realty by: John A. VanLuvanee, Esq.
790 Edison Furlong Road Eastburn and Gray, PC
Furlong, PA 18925 60 E. Court Street
PO Box 1389
Doylestown, PA 18901

Mr. James Bingler Pro Se'
29 Turkey Lane
Furlong, PA 18925

Mr. Robert Ambler Pro Se'
D/B/A RLA Real Estate
760 Edison Furlong Road
Furlong, PA 18925

Mr. Jim Bishop Pro Se'
Cornerstone Health and Fitness
740 Edison Furlong Road
Furlong, PA 18925

Mr. Frank Rupp Pro Se'
Ducoura Village
3488 York Road
Furlong, PA 18925

Mr. Bryan Knight Pro Se'
31 Turkey Lane
Furlong, PA 18925

Joseph Gunsiorowski Pro Se'
25 Turkey Lane
Furlong, PA 18925

Ms. Elizabeth Moriarty Pro Se'
70 Turkey Lane
Furlong, PA 18925

Mr. Nick Saunders Pro Se'
64 Turkey Lane
Furlong, PA 18925

Mr. John Connelly Pro Se'
78 Turkey Lane
Furlong, PA 18925

Mailing Date: January 3, 2019

DECISION

FINDINGS OF FACT:

1. The Zoning Hearing Board of Doylestown Township met the requirements of the Zoning Ordinance, the Municipalities Planning Code, and other relevant statutes as to legal notice of the hearing held.

2. The Applicant is the Lessee of the Subject Property pursuant to a Land Lease Agreement, and Amendment thereto, and therefore possessed of the requisite standing to make application to this Board.

3. Applicant, Vertical Bridge, is seeking a special exception to permit the use of the subject property for a wireless commercial communications tower, wireless commercial communications antennas, and supporting structures.

4. The following evidence was presented:

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|-------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| ZHB-1 | Application dated July 26, 2018 with Memorandum of Fact and Law; list of property owners within 500 feet; and a collection of exhibits which were marked separately as Applicant's exhibits |
| ZHB-2 | Proof of Publication of Notice of the Initial Hearing held September 17, 2018 |
| ZHB-3 | Proof of Posting the Premise with Notice of Hearing |
| ZHB-4 | Proof of Mailing |
| ZHB-5 | Doylestown Township Zoning Ordinance |
| ZHB-6 | 2010 Decision regarding a request for a variance to allow a proposed wireless communications tower less than 200 feet from occupied buildings |
| ZHB-7 | Entry of Appearance by John A. VanLuvanee, Eastburn and Gray, PC, on behalf of Artifact Realty Limited Partnership, as owner of 790 Edison Furlong Road, also known as Bucks County Tax Map Parcel No. 09-029-004 |
| Exhibit A-1 | Deed for the subject property dated September 29, 1999 |
| Exhibit A-2 | Deed for the subject property dated September 29, 2017 |

- Exhibit A-3 Redacted Ground Lease Agreement between Liberty Towers, LLC, owned and operated by VB, and Marion Dworaskowski, dated June 15, 2010
- Exhibit A-4 Redacted First Amendment to Land Lease Agreement between Vertical Bridge Development, LLC and Stanley Zawadzki, dated February 20, 2018
- Exhibit A-5 Memorandum in Support of VB's Zoning Hearing Board Application, prepared by counsel for VB, and dated July 24, 2018
- Exhibit A-6 Interference Analysis, signed and sealed by Andrew M. Petersohn, P.E., and dated May 22, 2018
- Exhibit A-7 Electromagnetic Emissions Analysis, signed and sealed by Andrew M. Petersohn, P.E. and dated May 22, 2018
- Exhibit A-8 Federal Aviation Administration Determination of No Hazard to Air Navigation, issued November 17, 2016
- Exhibit A-9 Extension to Federal Aviation Administration Determination of No Hazard to Air Navigation, issued May 8, 2018
- Exhibit A-10 Letter Requesting a Determination of Suitable Site for Tower-based Wireless Communications Facility, submitted by Counsel for VB and dated September 28, 2017
- Exhibit A-11 Response to Letter Requesting a Determination of Suitable Site for Tower-based Wireless Communications Facility, signed by Stephanie J. Mason, Township Manager, and dated October 27, 2017
- Exhibit A-12 Radio Frequency Design Report, signed and sealed by Andrew M. Petersohn, P.E., and dated May 22, 2018
- Exhibit A-13 Application to Continue Lawful Preexisting Nonconforming Conditions for 754 Edison Furlong Road, Furlong, PA 18925, submitted to Sinclair Salisbury, Director of Code Enforcement, and dated September 28, 2017
- Exhibit A-14 Response to Application to Continue Lawful Preexisting Nonconforming Conditions for 754 Edison Furlong Road, PA 18925, signed by Stephanie J. Mason, Township Manager, and dated October 27, 2017

- Exhibit A-15 Photographic Inventory and Simulations, prepared by Seidel Planning and Design, Ltd., and dated April 4, 2017
 - Exhibit A-16 Landscape Plan, prepared by NB&C Engineering services, signed and sealed by Philip A. Burtner, P.E., and last revised November 22, 2017
 - Exhibit A-17 Zoning drawings depicting the design and layout of VB's proposed use, prepared by NB&C Engineering services, signed and sealed by Philip A. Burtner, P.E., and last revised May 17, 2018
 - Exhibit A-18 Aerial Context Map, dated September 17, 2018
 - Exhibit A-19 Area of Interest, prepared by dBm Engineering, P.C.
 - Exhibit A-20 Existing Reliable Coverage, prepared by dBm Engineering, P.C.
 - Exhibit A-21 Reliable Coverage with Snake Hill, prepared by dBm Engineering, P.C.
 - Exhibit A-22 Proposed Reliable Coverage, prepared by dBm Engineering, P.C.
5. Hearings were held on the following dates:
- 09/17/2018 Multiple requests for party status; Applicant testimony; Exhibits A-1 through A-18 introduced
 - 10/25/2018 Additional requests for party status; Applicant testimony by RF Engineer, Andrew Petersohn, P.E.; Exhibits A-19 through A-22 introduced; Applicant rested; Protestant Artifact presented fact testimony and rested
 - 11/19/2018 All protestants provided the opportunity to testify and present evidence; public comment; any rebuttal. Record closed; parties given 14 days within which to submit Findings of Fact and Conclusions of Law
 - 12/17/2018 Public hearing held. Verbal Decision rendered.
6. The Subject Property is located in the C-1, Commercial District of Doylestown Township. It is approximately .43 acres in size and is undersized and lawfully nonconforming to the minimum lot area requirement of 20,000 square feet in the C-1 District.

7. The Subject Property accommodates a single-family residential detached dwelling. The structure is nonconforming to the minimum side yard setback requirements of twenty (20) feet in that its two (2) side yard setback distances are ten (10) feet and five (5) feet.

8. The use of the property as a single-family detached dwelling is permitted by right in the C-1 District.

9. The Subject Property is "L" shaped with a narrow frontage on Edison Furlong Road (44.97 feet) extending for a distance of approximately 225 feet at that width until it widens out to approximately 113 feet at the rear.

10. To its West, the Subject Property is bordered by a fitness center, ("Cornerstone"). To the East is an automobile repair shop. Across the street from the Subject Property are residential structures and uses.

11. The Applicant desires to construct and operate a wireless telecommunications facility on the Subject Property. Applicant proposes to raze the existing residential structure; construct a 120 foot monopole tower; and an array of antennas at a height of 115, 105 and 95 feet respectively.

12. Additionally, the leased area will include wireless communications facility equipment cabinets for the intended users; concrete equipment pads; coaxial cables; utility meters; an 8 foot fence; a generator; and a 10 foot wide gravel access road.

13. The proposed users of the monopole are federally licensed wireless communications service providers.

14. The Subject Property abuts a Residential Zoning District.

15. A "Tower-Based Wireless Communications Facility", Use F-4 is permitted in the C-1, Commercial Zoning District by special exception, §175.67B of the Ordinance, subject to the factors contained within §175-137 special exceptions, and §175-138 Additional Factors; and, further subject to §175-16 Uses Enumerated; use regulations §175-16.F.

16. Section 175-16.F.(4)(c)[1][b] requires that an applicant for a tower based wireless communication facility outside of rights of way demonstrate "that a significant gap in wireless coverage exists with respect to all wireless operators in the applicable area and that the type of wireless communication facility ("WCF") being proposed is the least intrusive means by which to fill that gap in wireless coverage."

17. Andrew Petersohn, P.E., offered expert testimony in an attempt to establish a "significant gap in wireless coverage for the "four" wireless operators in the subject area of Doylestown Township." Mr. Petersohn also authenticated Exhibit A-12 which he represented existing unreliable wireless communication service levels in the absence of the proposed facility.

18. Multiple nearby property owners testified to the sufficiency of cell coverage in the area. Each of the neighbors testifying indicated that they use their cell phones in the house, in their car, and outside of their homes, with varying frequencies, without losing service. Specifically:

- a. James Bingler, lives some 500 feet from the cell tower and uses his cell phone infrequently, without problem.
- b. Bryan Knight, 31 Turkey Lane, indicated that he and his family are heavy cell and data users from the home, on the property, and in the car. Mr. Knight has lived in this home since 2008 and has experienced no dropped calls.
- c. Mr. E. Moriarty, 70 Turkey Lane, testified that he has no land line. His cell phone serves as his primary phone. He experiences no dropped calls.
- d. Mr. Nick Saunders, 64 Turkey Lane, testified that he is using his cell phone all day for work and non-work purposes from his home. He does not experience dropped calls.
- e. Mr. John Connelly, 78 Turkey Lane, uses his cell phone “all day, every day”. He does not feel the need for greater coverage for his use. He has “never missed a call”.
- f. Susan Bingler, 29 Turkey Lane, has never had a dropped call at her house nor have her guests.
- g. Mr. Rick Fehrs, co-partner in Artifact, testified that he operates the business of Artifact 6 days per week for 6-7 hours per day, all of his business calls are forwarded to his cell phone. His cell phone serves to his satisfaction. In addition, Mr. Fehrs indicated that people onsite will take cell phone calls in their cars before leaving the premises because the cell service is sufficient.

19. In response to the “significant gap” issue, Elizabeth Moriarty, 70 Turkey Lane, offered responsive evidence. Ms. Moriarty traveled Edison Furlong Road between York Road and Woodcrest Lane and on Pebble Hill Road between Sugar Bottom Road and Woodview Drive. Ms. Moriarty described the methodology used in assessing whether she dropped any calls while traversing the area. Ms. Moriarty’s testimony is consistent with an exhibit prepared by Ms. Moriarty and entered into evidence as Exhibit P-1. The P-1 Exhibit illustrates that Ms. Moriarty was able to drive the aforementioned Edison Furlong Road and Pebble Hill Road, dropping calls only in one particular area (GPS coordinates 40.291150-75.069 and 40.290181-75.0908).

The dropped call area was discussed by Applicant’s experts who indicated that the proposed cell tower would not address that particular gap in coverage.

20. The Zoning Hearing Board finds the fact testimony of the nearby property owners credible with regard to the sufficient level of service in the area of the proposed tower. Some of the lay observations are directly inconsistent with the data presented by the RF Engineering expert, Mr. Petersohn. To the extent that the factual underpinnings of Mr. Petersohn's testimony are inconsistent with the testimony offered by the neighboring property owners, this ZHB finds the testimony of the neighboring property owners more credible and accepts same as fact.

21. Section 175-16.F(4)(c)[1][c] requires that a tower based wireless communication facility be designed at the "minimum functional height". This subsection further requires that VBD submit documentation to the Township justifying the total height of the structure.

22. VBD presented testimony that Verizon would utilize the Cell Tower at a height of one hundred and five (105) feet.

23. VBD presented no testimony or evidence justifying its request for a one hundred and twenty (120) foot WCF.

24. Section 175-16.F(4)(c)[3][b][ii] requires that where the site of a proposed WCF abuts a residential zoning district the WCF shall be permitted only where it is disguised by attaching it to an existing tall structure where the WCF will not increase the height of the existing structure or by disguising the WCF so that it resembles a tree, a silo or a church steeple so that the WCF will fit in with the residential character of the community.

25. VBD did not meet its burden of proof under Section 175-16.F(4)(c)[3][b][ii]. The proposed Cell Tower does not fit in with the character of the neighborhood.

26. Section 175-16.F(4)(c)[1][e][2] requires that the lot area of a site on which a WCF will be developed, be in compliance with the requirements for the applicable district.

27. The C-1 Zoning District in which the Site is located requires a minimum lot area of twenty thousand (20,000) square feet.

28. The Site is undersized, measuring approximately nineteen thousand twenty nine (19,029) feet. Accordingly, the Site does not meet the specific minimum lot area requirement set forth for the wireless communications facilities use. Further, the lot is technically a "flag lot", with insufficient frontage, which may only support a single-family residential dwelling as a use permitted by right. Section 175-17.G(1). Applicant is attempting to change the use from the permitted single-family residential use to the WCF use, which would require a variance to locate upon a "flag lot."

29. Section 175-16.F(4)(c)(1)(d) further requires that a wireless communications facility is subject to the minimum yard requirements of the applicable

zoning district. The information contained within the zoning information table, contained upon the Site Plan prepared and offered by the applicant, reflects that the WCF is non-compliant with the minimum required side yard and rear yard setbacks.

30. The C-1 commercial zoning district in which the Site is located requires a side yard measuring twenty (20) feet.

31. VBD apparently relies upon an existing side yard setback of approximately nine (9) feet on one side and approximately three (3) feet on the other side of the existing single-family dwelling, in determining the side yard setback requirement.

32. VBD proposes demolition of the existing residential structure, therefore the existing non-conforming side yard setback will be abandoned.

33. VBD is required to meet the minimum side yard setback requirements pursuant to the provisions of the Zoning Ordinance governing the wireless communications facilities use, and has failed to do so.

34. The required rear yard setback in the C-1 commercial zoning district is twenty-five (25) feet.

35. VBD's zoning drawings (Exhibit A-17) depict a proposed twenty-two (22) foot rear yard setback.

36. VBDs plan and proposed use fails to comply with the minimum required rear yard setback requirement set forth in the Zoning Ordinance.

CONCLUSIONS OF LAW

1. The Subject Property is located within the C-1, Commercial Zoning District of Doylestown Township.

2. The proposed F4 use is permitted by special exception in the C-1 Commercial Zoning District pursuant to Section 175-16.F of the Zoning Ordinance, subject to compliance with the specific enumerated criteria for Use F4 as set forth in the Zoning Ordinance.

3. In the case of a use permitted by special exception to a zoning ordinance, there is a presumption that the use is a conditionally permitted use, legislatively allowed if the standards set forth in the zoning ordinance are met. *JoJo Oil Co., Inc. v Dingman Twp. Zoning Hearing Bd.*, 77 A.3d 679 (Pa. Commw. Ct. 2013).

4. The zoning regulations that are applicable include those regulations that apply to all "tower-based wireless communications facilities" [Section 175-16.F.(4)(b)] and those regulations that apply to "tower-based facilities outside the rights-of -way" [Section 175-16.F. (4)(c)].

5. Section 175-16.F.(4)(c)[1][b] provides as one of the specific enumerated criteria that an applicant for a tower based wireless communication facility outside of rights of way demonstrate "that a significant gap in wireless coverage exists with respect to all wireless operators in the applicable area and that the type of wireless communication facility ("WCF") being proposed is the least intrusive means by which to fill that gap in wireless coverage."

6. VBD failed to establish by credible evidence that a "significant gap" in wireless coverage exists for any carrier much less *all* carriers.

7. VBD failed to establish with credible evidence that any purported gap in wireless coverage exists "with respect to all wireless operators". (Emphasis added).

8. In concluding that VBD failed to meet its burden with respect to the specific enumerated criteria, the Zoning Hearing Board applied its authority to judge the credibility of competing witnesses. In so doing, the Zoning Hearing Board rejected the expert testimony of VDB's Radiofrequency Expert, Andrew M. Petersohn, P.E. regarding the alleged "significant gap in coverage", and credited the lay testimony of the multiple witnesses that there exists no gap in coverage.

9. The zoning board has the obligation to weigh the evidence before it. It is the sole judge of the credibility of witnesses and the weight to be given their testimony. *Hawk v. City of Pittsburgh Zoning Bd. Of Adjustment*, 38 A.3d 1061 (Pa. Commw. Ct. 2012).

10. Section 175-16.F. (4)(c)[1][b] of the Zoning Ordinance provides as one of the specific enumerated criteria that an applicant for a WCF use the least intrusive means to fill a significant gap in coverage.

11. VBD failed to establish with credible evidence that the proposed Cell Tower is the "least intrusive means" to fill any purported gap in coverage. VDB did offer testimony discussing disguising the monopole as a tree, but adequate testimony was not offered to establish that alternative means were not available to provide the "least intrusive mean".

12. Section 175-16.F(4)(c)[1][c] provides as one of the specific enumerated criteria that a tower based wireless communication facility be designed at the "minimum functional height". This sub-section further requires that VBD submit documentation to the Township justifying the total height of the structure.

13. VBD presented testimony that Verizon would utilize the Cell Tower at a height of one hundred and five (105) feet.

14. VBD presented no testimony or evidence justifying its request for a one hundred and twenty (120) foot WCF.

15. Section 175-16.F(4)(c)[3][b][ii] provides as one of the specific enumerated criteria that where the site of a proposed WCF abuts a residential zoning district the WCF shall be permitted only where it is disguised by attaching it to an existing tall structure where the WCF will not increase the height of the existing structure or by disguising the WCF so that it resembles a tree, a silo or a church steeple so that the WCF will fit in with the residential character of the community.

16. VBD did not meet its burden of proof under Section 175-16.F(4)(c)[3][b][ii]. The proposed Cell Tower does not fit in with the character of the neighborhood.

17. Section 175-16.F(4)(c)[1][e][2] provides as one of the specific enumerated criteria that the lot area of a site on which a WCF will be developed, be in compliance with the requirements for the applicable district.

18. The C-1 Zoning District in which the Site is located requires a minimum lot area of twenty thousand (20,000) square feet.

19. The Site is undersized, measuring approximately nineteen thousand twenty nine (19,029) feet. Accordingly, the Site does not meet the specific minimum lot area requirement set forth for the wireless communications facilities use.

20. Section 175-16.F(4)(c)(1)(d) further requires that a wireless communications facility is subject to the minimum yard requirements of the applicable zoning district.

21. The C-1 commercial zoning district in which the Site is located requires a side yard measuring twenty (20) feet.

22. VBD apparently relies upon an existing side yard setback of nine feet three inches (9'3") applicable to the current residential structure, in determining the side yard setback requirement.

23. VBD proposes demolition of the existing residential structure, therefore the existing non-conforming side yard setback will be abandoned.

24. VBD is required to meet the minimum side yard setback requirements pursuant to the provisions of the Zoning Ordinance governing the wireless communications facilities use, and has failed to do so.

25. The required rear yard setback in the C-1 commercial zoning district is twenty-five (25) feet.

26. VBD's zoning drawings (Exhibit A-17) depict a proposed twenty-two (22) foot rear yard setback.

27. VBDs plan and proposed use fails to comply with the minimum required rear yard setback requirement set forth in the Zoning Ordinance.

28. VBD failed to meet its burden of establishing compliance with the specific objective criteria of the Zoning Ordinance for its proposed Cell Tower. Failure to meet the specific enumerated criteria contained within the Doylestown Township Zoning Ordinance, for the F4 WCF use distinguishes the present case from the matter of, *Tower Access Group, LLC v. The South Union Township Zoning Hearing Board*, 2018 WL 3613233 (Pa. Commw. Ct. 2018) (no specific requirements relating to cell phone towers in the South Union Township ordinance, let alone a specific requirement that an applicant for such a special exception establish a "substantial gap in coverage" as a prerequisite for obtaining the special exception).

29. Objectors presented credible evidence that no "significant gap in wireless coverage" exists in the vicinity of the Site.

30. VBD failed to meet its burden of establishing the existence of a "significant gap" in coverage and acknowledged that the Cell Tower will not fill the very small existing coverage gap.

31. Accordingly, the Doylestown Township Zoning Hearing Board determined, unanimously, to DENY relief to the Applicant and the Subject Property as is set forth hereafter.

ORDER

Upon consideration and after hearing, the Zoning Hearing Board of Doylestown Township hereby DENIES Applicant's request for special exceptions, pursuant to §175-137, §175-138, §175-67B, §175-16F, and §175-16F(4)(c)[1][a] & [d] of the Doylestown Township Zoning Ordinance, in order to permit the use of the Subject Property for a wireless commercial communications tower, wireless commercial communications antennas, and supporting structures.

**ZONING HEARING BOARD OF
DOYLESTOWN TOWNSHIP**

By: /s/ William J. Lahr
William J. Lahr, Chairman

/s/ Samuel D. Costanzo
Samuel D. Costanzo, Vice Chairman

/s/ Mitchell Aglow
Mitchell Aglow, Secretary